

## **REMARKS**

This paper is filed in response to the Office Action mailed on July 24, 2009. Claim 1 is currently amended, and claim 6 is currently cancelled without prejudice. Claims 1-5 and 7-19 are currently pending. In light of the following remarks, the applicant requests withdrawal of the pending rejections and advancement of this application to allowance.

### **A. Double Patenting Rejection**

In the Office Action, claims 1-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending application having serial number 09/631,000. The applicant notes that neither of these applications is yet allowed and thus this provisional rejection should not impede allowance. The applicant will address the this rejection with an appropriate terminal disclaimer upon allowance of the application(s).

### **B. Rejection under 35 U.S.C. § 101**

Claims 1-6 and 16-19 stand rejected as being directed to non-statutory subject matter. The basis for the rejection is that the claims do not positively recite a device because the recited term "database" could read on paper attached to a hand-held computer. The applicant respectfully traverses this rejection and does not concede any characterizations of the pending application provided in the Office Action.

Claim 1 was amended to clarify that the database is stored in the computer. Claims 1-6 thus recite a method in which data items are entered into a database in the hand-held computer, and the claim cannot be reasonably interpreted to cover writing the data items on a sheet of paper attached to the computer. Furthermore, claims 1-6 recite, "controlling operation of the pump." Thus, claims 1-6 are further limited to the act of controlling operation of a pump, which is a physical device. For at least these reasons, the applicant respectfully submits that claims 1-6 have specific physical limitations, including physical devices and thus requests withdrawal of the pending rejection with respect to these claims.

Claims 16-19 similarly recite, "batch downloading the set of program data from the hand-held computer to the memory within the medical pump." The set of program data is being downloaded to memory within the medical pump and thus the memory cannot reasonably be

interpreted as a sheet of paper. Furthermore, the data could not be batch downloaded to the memory if the memory was a sheet of paper. For at least these reasons, the applicant respectfully submits that claims 16-19 have specific physical limitations and requests withdrawal of the pending rejection with respect to these claims.

**C. Rejection of Claim 6 under 35 U.S.C. § 112**

Claim 6 stands rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter the applicant regards as the invention. The applicant respectfully traverses this rejection and do not concede any characterization of the pending claim provided in the Office Action. However, the applicant has cancelled claim 6 and this rejection is now moot.

**D. Rejection of Claims 1-3 and 6 under 35 U.S.C. § 103**

Claims 1-3 and 6 stand rejected as being obvious over Peterson (US 5,788,669) in view of Eggers (US 5,713,856) and in view of Official Notice in view of Klein (US 6,714,969) and in even further view of Blomquist (US 5,658,250). The applicant respectfully traverses these rejections and does not concede any characterizations of the pending application or cited references provided in the Office Action.

The applicant renews the arguments submitted in the Response electronically filed on May 26, 2009, including the arguments that (i) Eggers and Blomquist both teach away from a claimed combination of batch downloading and individualized, patient-specific data items; and (2) even if Eggers and Blomquist do not teach away from the pending claims, combining them with Peterson, Official Notice, and Klein still would not result in the claimed combination of elements.

In response to these arguments, page 20 of the Office Action asserts col. 11, line 64- col. 12, line 10 of Blomquist teaches batch-downloading individualized, patient specific parameters. This passage from Blomquist reads:

Keyboard 24 can intentionally be provided with a limited number of keys to keep operation of pump 12 through keyboard 24 simple. However, some applications and even some patient specific settings may involve numerous inputs such that the use of a standard keyboard, through computer system 30 may be advantageous. Downloading of this information from a computer system 30 is useful since all of

the inputs of information can be made through a standard keyboard of computer system 30. The present invention provides the caregiver with the ability to download just applications to flash memory 150, or applications to flash memory 150 and patient specific settings to the other memory locations without entering information through keyboard 24.

Blomquist, col. 11, line 64- col. 12, line 10. This cited paragraph from Blomquist does not make any reference to, or even suggestion of, batch-downloading. Rather, the first (topic) sentence of the cited paragraph acknowledges that the keyboard 24 on a pump has limited keys to keep operation simple. The next sentence thus discloses using a standard keyboard, which is available on computer system 30, when numerous inputs are required. In other words, it is easier to type on a standard keyboard that has a full compliment of keys than it is to input data on a pump keyboard that has limited keys.

Furthermore, the teaching in this cited paragraph from Blomquist also discloses using a standard keyboard because "patient specific setting may involve numerous inputs." This disclosure teaches data items are typically entered one-by-one and thus teaches away from batch downloading data items. This interpretation of the paragraph at col. 11, line 64- col. 12, line 10 of Blomquist is consistent with the disclosure of col. 10, line 15-17 of Blomquist, which states prompts are used "for requesting the caregiver to enter particular settings when entered via computer system 30."

Page 20 of the Office Action also notes the applicant's previous statement, "Although the claims may not be so limited, Blomquist also does not teach that any patient specific data is batch downloaded." The Office Action that interprets this statement as an admission "that the claims of the Blomquist reference disclose the embodiment of the batch downloading individualized, patient-specific data." The applicant made no such admission. The applicant was only noting that his discussion was focused on the disclosure in Blomquist and that he was not providing any analysis, comment, or opinion of the scope of the claims.

For at least the foregoing reasons, the applicant respectfully submits claims 1-3 and 6 are not obvious over the cited references. Therefore, the applicant respectfully requests withdrawal of the pending rejections.

**E. Rejection of Claims 7-19 under 35 U.S.C. § 103**

Claims 7-19 stand rejected as being obvious over Peterson in view of Eggers, in view of Official Notice in view of Blomquist and in view of Klein. The applicant respectfully traverses these rejections and does not concede any characterizations of the pending application or cited references provided in the Office Action.

Claims 7-9 recite (i) “a database including a plurality of program data records and a plurality of data key records, each program data record containing . . . individualized, patient-specific data items for controlling operation of a medical pump,” and (ii) “a database management system programmed to link a data key to a set of program data and to batch download data to the memory within the medical pump.” Claim 10- 15 similarly recites a set of program data that comprises individualized, patient-specific data items and a processor configured to batch download the program data. Finally, claims 16-19 recites batch downloading individualize, patient specific program data.

As explained above, (i) Eggers and Blomquist both teach away from a claimed combination of batch downloading and individualized, patient-specific data items; and (2) even if Eggers and Blomquist do not teach away from the pending claims, combining them with Peterson, Official Notice, and Klein still would not result in the claimed combination of elements.

For at least the foregoing reasons, the applicant respectfully submits claims 7-19 are not obvious over the cited references. Therefore, the applicant respectfully requests withdrawal of the pending rejections.

**F. Rejection of Claims 4 and 5 under 35 U.S.C. § 103**

Claims 4 and 5 stand rejected as being obvious over Peterson in view of Eggers in view of Official Notice in view of Klein in view of Blomquist as applied to claim 3 above, and in further view of “Acute Health Solutions.” The applicant respectfully traverses this rejection and does not concede the characterizations of the cited references or the pending application set forth in the office action.

Claims 4 and 5 depend from claim 1 and also include a combination that comprises individualized, patient-specific data items and that at least some of these data items are batch-downloaded into a medical pump. As discussed above, Peterson, Eggers, Official Notice, Klein,

and Blomquist all fail to teach a combination that includes these claim elements. Acute Health Solutions also fails to teach or suggest these claim elements.

Therefore, no combination of the cited references or official notice will result in the claimed combination of elements and the applicant respectfully requests reconsideration and withdrawal of the pending rejection of claims 4 and 5.

**G. Rejection of Claim 18 under 35 U.S.C. § 103**

In the Office Action, claim 18 has been rejected as being obvious over Peterson in view of Eggers, in view of Official Notice, and in view of Klein in view of Blomquist as applied to claim 17 above, and in further view of "Acute Health Solutions."

Claim 18 depends from claim 16 and also includes a combination that comprises individualized, patient-specific data items and that at least some of these data items are batch-downloaded into a medical pump. As discussed above, Peterson, Eggers, Official Notice, Klein, and Blomquist all fail to teach a combination that includes these claim elements. Acute Health Solutions also fails to teach or suggest these claim elements.

Therefore, no combination of the cited references or official notice will result in the claimed combination of elements and the applicant respectfully requests reconsideration and withdrawal of the pending rejection of claim 18.

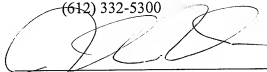
**CONCLUSION**

In view of the foregoing remarks, the applicant respectfully requests withdrawal of the pending rejection and advancement of this application to issuance. The applicant also notes that there may be additional reasons that the claimed invention is patentably distinct from the cited references in addition to those raised in the above remarks. The applicant reserves the right to raise any such reason in the future.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact the undersigned attorney at (612) 336-4608.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read 'JCR', is written over a horizontal line.

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JCR/lmb

Dated: January 25, 2010